

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-020909

07/07/2011

HON. ROBERT H. OBERBILLIG

CLERK OF THE COURT
R. Aguilera
Deputy

JANET L BAUER

THOMAS A STOOPS

v.

JOEL N BRODY, et al.

BARRY M MARKSON

JAY ROSENTHAL

**JURY TRIAL SET
TRIAL MANAGEMENT CONFERENCE SET**

Courtroom-OCH 309.

8:29 a.m. This is the time set for Telephonic Pretrial Status/Scheduling Conference. Plaintiff is represented by counsel, Thomas A. Stoops. Defendants John Bauer and Sunland Home Inspections are represented by counsel, Jay Rosenthal. All parties appear telephonically.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Mr. Stoops informs the Court that his client has settled with Joel N. Brody and Jennifer Plett, the other two defendants in this matter.

Court and counsel discuss the status of the case, including the parties' proposed discovery/disclosure deadlines.

IT IS ORDERED adopting the proposed scheduling deadlines as set forth on the record.

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IT IS FURTHER ORDERED as follows:

1. Setting a **Final Pretrial Management Conference on February 6, 2012 at 9:00 a.m. (allotted time: 60 minutes)** in this division. All counsel and/or parties representing themselves must appear in person and cannot appear telephonically.
2. Setting a **3-Day Jury Trial on February 14, 2012 at 9:00 a.m.** before:

JUDGE ROBERT H OBERBILLIG
OLD COURT HOUSE
125 WEST WASHINGTON STREET
THIRD FLOOR – COURTROOM 309
PHOENIX, AZ 85003
(602) 506-2194

Scheduled Trial days are February 14, 15, and 16, 2012.

NOTE: This Court utilizes FTR for an electronic record of the proceedings. However, any party may request the presence of a court reporter by contacting the division three (3) court business days before the scheduled hearing.

DUTIES PRIOR TO THE FINAL PRETRIAL CONFERENCE

3. **MOTIONS IN LIMINE.** All Motions in Limine shall be filed no later than **5:00 p.m. on January 17, 2012** and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 152 (1972): The primary purpose of a Motion in Limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(c). A written Response to a Motion in Limine may be filed no later than ten (10) calendar days thereafter. The Court may rule on Motions in Limine without oral argument. No Replies shall be filed. Prior to filing a Motion in Limine, counsel are to confer and attempt to resolve those issues. Counsel shall further certify to the Court the efforts made to resolve those issues before filing a Motion in Limine. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any Motion in Limine. Any Motion in Limine filed without the movant having first complied with Rule 7.2(a), will be stricken by the Court.
4. **JOINT PRETRIAL STATEMENT.** Counsel shall deliver to the trial judge no later than **5:00 p.m. on January 31, 2012** a copy of the **Joint Pretrial Statement** signed by all counsel.

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- a) **Deposition Summary:** In addition to the information required by Rule 16(d), counsel shall at the Final Pretrial Conference provide to the Court copies of any deposition transcripts to be read to the jury. The offering party will highlight the portions to be read, the other side will highlight Rule 106 additions, and any objections for the court to rule on will be clearly marked in the margin. The parties are encouraged to agree on narrative summaries of deposition testimony, using brief question and answer excerpts only to emphasize very important testimony or to cover areas of testimony that cannot be summarized to the satisfaction of all counsel. No stipulation should be unreasonably refused.
 - b) **Final Trial Witnesses:** In addition to the information required by Rule 16(d), the Joint Pretrial Statement shall include an exhibit titled: **Final Trial Witness List**. This list shall contain the name of each witness a party actually intends to call at trial, the day on which they intend to call each witness and the estimated time needed for direct, cross and re-direct examination.
5. **JURY INSTRUCTIONS; VOIR DIRE QUESTIONS.** Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall deliver to the trial judge, with their Joint Pretrial Statement, copies of:
- a) Proposed voir dire questions.
 - b) A joint set of agreed-upon preliminary and final jury instructions and **proposed forms of verdicts**.
 - c) Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) need not be typed and may be requested in the following manner: RAJI 4th Edition (civil) - Duty of Jurors. Non-RAJI instructions should be typed. Each instruction should cover only one subject.

Any jury instructions not delivered with the Joint Pretrial Statement will be deemed waived by the Court, unless the Court concludes that good cause exists for the untimely submission.

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DUTIES AT FINAL PRETRIAL CONFERENCE

6. At the Final Pretrial Conference, counsel shall be prepared to discuss:
 - a) Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
 - b) Stipulations for the foundation and authenticity of exhibits.
 - c) Preliminary jury instructions, juror notebooks (counsel shall bring any proposed juror notebooks to the conference), mini opening statements and voir dire.
 - d) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
 - e) Use of short-trial or summary jury trial.
 - f) Any special scheduling or equipment issues.
7. Counsel shall call the division clerk at **(602) 506-0318 on or before 12:00 noon on January 31, 2012** to discuss the instructions regarding submission of exhibits and to make arrangements for delivering exhibits. The exhibits will be marked serially as they are listed in the Joint Pretrial Statement – Plaintiff's first, Defendant's second. Please advise the clerk, on the record, which exhibits may be marked directly into evidence. Additionally, Counsel shall meet and confer regarding authenticity, foundation, and admission of exhibits to expedite the process during trial. Counsel shall also confer to eliminate any duplicate exhibits. Counsel are advised that exhibits should be received into evidence prior to asking witnesses to testify regarding the substance of the exhibit. **Exhibits are due to this division's clerk by 12:00 noon on February 2, 2012.** If the division clerk is not available to take your call, please leave a message indicating if you are calling on behalf of Plaintiff or Defendant and include the case number, the date trial is scheduled to begin, a return phone number, and an email address. **See attached Exhibit Submission Instructions.**
8. One day's jury fees will be assessed unless the court is notified of settlement before 2:00 p.m. on the judicial day before the trial. Counsel are reminded to promptly notify the court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.

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9. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.

IT IS FURTHER ORDERED that should the parties reach a settlement in this matter prior to the scheduled events herein set, they shall notify this division and request that the Final Pretrial Management Conference and 3-Day Jury Trial be vacated.

8:40 a.m. Matter concludes.

ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.

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Procedures for Submitting Exhibits to be Marked For Jury Trial

- **Please provide an exhibit list with a brief description of each exhibit.** The list should contain the case number, the caption, scheduled trial date and **the party submitting the exhibits (Plaintiff/Defendant).**
- Counsel should confer and do the following:
 - Ø indicate on the exhibit list which exhibits have been stipulated in evidence
 - Ø insure that there are **NO duplicate exhibits submitted**
- Exhibits will be marked numerically and consecutively.
 - Ø Plaintiff's exhibits are usually marked first followed by Defendant's.
 - Ø **Do NOT use subsections of exhibits** (ex: 4a or 4.001). Any subsection of exhibits received, shall be marked as the next available exhibit number and your exhibit list numbers will likely not match the Court's exhibit list numbers. Please use the next consecutive number for each exhibit.
 - Ø Do not leave blank spaces as we will not hold numbers. If there is a blank, the next exhibit shall be marked consecutively to the previously numbered exhibit.
- Exhibits should be submitted in 3-Ring binders and **separated by a numbered tabbed divider sheet.** The tabbed divider shall reflect the number of the exhibit and should be placed on top of the exhibit. **DO NOT STAPLE THE DIVIDER TO THE EXHIBIT.** **Please Note:** Binders must be only **half full** as there must be enough space to allow the exhibit tags to be affixed.
- Blow-ups and large items may only be used for demonstrative purposes. You may bring them to court to use during trial; however, if you would like them to be marked as an exhibit, you must provide/submit an 8 ½ x 11 photo of the item.
- **Depositions are NOT marked as exhibits.** Counsel shall present **ORIGINAL** depositions for filing at the same time that they provide their exhibits. **ORIGINAL** depositions are filed in by the division Clerk.
- Please call the division clerk (**602-506-0318**) on or before **12:00 noon on January 31, 2012** to schedule an appointment to deliver exhibits. If the division clerk is not available to take your call, please leave a message **indicating if you are calling on behalf of Plaintiff or Defendant and include the case number, the date trial is scheduled to begin, a return phone number, and an email address.**

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- **EXHIBITS MUST BE DELIVERED BY 12:00 noon on February 2, 2012 to Judge Oberbillig's Division Clerk. If the Clerk is unavailable, the exhibits may be given to the Bailiff, or Judicial Assistant.**
- If you have questions, you may call the division clerk (602-506-0318) for clarification. If the clerk is unavailable, please leave a message with the information indicated in the preceding paragraph. You may also send an email to: aguilerar001@cosc.maricopa.gov